IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.3101 of 2004
To
FIRST APPEAL No.3112 of 2004
With
CROSS OBJECTION No.9 of 2005
To
CROSS OBJECTION No.17 of 2005
With
CROSS OBJECTION No.67 of 2005
To
CROSS OBJECTION No.69 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE J. M. PANCHAL
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

SPL.LAQ OFFICER & ANR. - Appellants
Versus
HUSENBHAI ALLARAKHABHAI & ORS. - Respondents

==========

Appearance :

MR SS SHAH, GP for Appellants in First Appeal Nos.3101 to 3106 of 2004 and Cross-Objections Nos.9 to 15 of 2005. ***AND***
MS MINI NIAR, AGP for Appellants in First Appeal Nos.3107 to 3112 of 2004 & Cross-Objection Nos.16, 17, 67 to 69 of 2005.
MRS SUSHMA S SHAH WITH MR SUNIL K SHAH for Original Claimants in all First Appeals & X-Objections.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10/05/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is challenged in the above numbered appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated February 27, 2002 rendered by the learned 2nd Extra Assistant Judge & Special Judge (LAR), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.640 of 1995 to 652 of 1995 by which the claimants have been awarded additional amount of compensation at the rate of Rs.79.00 Paise per square metre for their acquired lands over and above the compensation offered to them at the rate of Rs.6.00 Paise per square metre by award dated January 20, 1994 made by the Special Land Acquisition Officer under Section 11 of the Act.

The claimants by filing Cross Objections claim

that they should have been awarded interest from the date on which possession of the lands acquired was taken and not from the date of publication of notification issued under Section 4 of the Act and that they should also have been awarded interest on the amount awarded under Section 23(1-A) of the Act

2. The Executive Engineer, Narmada Project, Main Canal, Construction Division No.3/2, Gandhinagar, proposed to the State Government to acquire lands of Village: Telav, Taluka: Sanand, District: Ahmedabad for the public purpose of construction of Dholka Branch Canal under Sardar Sarovar Project. On perusal of the same, the State Government was satisfied that the lands of Village: Telav mentioned therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on September 24, 1991. Thereafter, necessary inquiry was conducted under Section 5A of the Act after which a report

was submitted by the Special Land Acquisition Officer to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of Village: Telav specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Dholka Branch Canal under Sardar Sarovar Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on June 3, 1992. The interested persons were thereafter served with the notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100=00 per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.6.00 per square metre for their lands by award dated January 20, 1994. The claimants were of the opinion that the offer of

compensation made to them was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were numbered as Land Acquisition Case Nos.640 of 1995 to 652 of 1995.

3. On behalf of the claimants, witness Mr.Momin Gulam Ahemad Mahammadbhai was examined at Exhibit 41. The witness stated before the Court that the lands acquired were even and fertile lands and as irrigation facilities were available, each claimant was able to raise crops such as; paddy, wheat, groundnut, cumin-seeds, vegetables, etc. in a year. The witness further asserted that each claimant was able to earn net income of Rs.45,000=00 per year per *vigha* from the sale of agricultural produces. The witness

maintained before the Court that the boundaries of Village: Sanand, Village: Kaneti, Village: Shela, Village: Sanathal, Village: Kolat were touching the boundaries of Village: Telav. According to this witness, Village: Telav was within the limits of Ahmedabad Urban Development Authority (AUDA). The witness stated that Village: Telav was situated at a distance of 1 Kilometre away from Village: Ghuma whereas Village: Godhavi was situated at a distance of 3 Kilometres away from Village: Ghuma and Sarkhej Cross Roads was situated at a distance of 3 Kilometres away from the acquired lands. It was also mentioned by the said witness that the lands acquired were near Ahmedabad-Sarkhej-Sanand-Viramgam Highway and four different roads were passing from Village: Telav, i.e. Telav-Sanand Road, Sanand-Santhal Road, Sanand-Sagodara-Bavla Highway etc.. According to this witness, Village: Telav was fully developed and facilities such as; banks, cooperative societies, telephone, railway station, dispensaries, private hospitals, S.T.Bus, etc.

were available in the village. The witness mentioned that the biggest water-park of Asia, i.e. Goyal Water Park, was also situated in Village: Telav and Saffrony Bungalows as well as big societies had come up in the village. According to this witness, Sanand Railway Station and market yard were situated only at a distance of 1 Kilometre away from Village: Telav.

This witness was cross examined by the learned counsel for the Acquiring Authorities. In his cross-examination, the witness mentioned that he was not knowing about correct prices of the lands prevailing in his village at the relevant time. Though this witness was cross-examined at length, nothing substantial could be elucidated.

4. On behalf of the Acquiring Authorities, witness Mr.Bharatbhai Viththalbhai Shah, who was then Deputy Executive Engineer at Sanand, was examined at Exhibit 68. The witness mentioned in his testimony that before determining the market

value of the lands acquired in the instant cases, the Special Land Acquisition Officer had taken into consideration all the relevant factors and, therefore, the claimants were not entitled to enhanced compensation. According to him, fertility and value of the lands of surrounding villages were different and that Village: Shela was situated at a distance of 7 Kilometres from Village: Telav. The witness also stated that Village: Ghuma was situated at a distance of 10 Kilometres away from Village: Telav whereas Village: Godhavi was at a distance of 16 Kilometre and that population of Village: Telav was around 3000. What was stated by the witness was that Village: Telav was undeveloped and no industrial development had taken place near the lands acquired and, therefore, the claimants were not entitled to enhanced compensation.

However, in cross-examination, it was admitted by this witness that he was not associated in any manner with the proceedings, which were

initiated for acquiring the lands from Village: Telav in the instant cases and the distances which were mentioned in his examination-in-chief are stated on his guess work.

5. It may be mentioned that the claimants had also produced: (1) previous award of the Reference Court relating to the lands of Village: Garodiya at Exhibit 60; (2) another copy of the judgment dated October 12, 2000 rendered by the High Court in First Appeal No.1536 of 2000 and cognate matters by which the previous award of the Reference Court relating to the lands of Village: Garodiya, which was produced at Exhibit 60, was confirmed, at Exhibit 61; (3) copy of the previous award of the Reference Court relating to the lands of Village: Godhavi at Exhibit 62; and (4) copy of the judgment dated August 18, 2000 rendered by the High Court in First Appeal No.737 of 2000 by which previous award relating to the lands of Village: Godhavi produced at Exhibit 62 was confirmed, at Exhibit 63.

6. On appreciation of the evidence adduced by the parties, the Reference Court noticed that the enhanced compensation was not claimed by the claimants either on the basis of comparable sale instances or on yield method, but had relied upon the previous awards of the Reference Court relating to the lands of Village: Ghuma, Village: Shela, Village: Garodiya and Village: Godhavi. The learned Judge also noticed that the claimants had produced order dated December 7, 1984 passed by the District Collector produced at Exhibit 35, by which AUDA had proposed to purchase lands of Survey Nos.77, 79 and 83 of Village: Sanand, for the purpose of construction of shopping centre at the rate of Rs.150/- per square metre and held that the said instance was not a relevant piece of evidence for the purpose of determining the market value of the lands acquired as the same related to small pieces of lands and were away from Village: Sanand town, which were fully developed town. So also, *hak-patrak* produced by the claimants at Exhibit 36

was not found to be reliable piece of evidence for the purpose of determining the market value of the lands acquired in the instant case as copy of the sale deed was not produced for consideration of the Court. On perusal of the map produced by the claimants at Exhibit 39, the learned Judge deduced that the boundaries of Village: Sanand, Village: Kolat, Village: Sanathal, Village: Kaneti, etc. were touching the boundaries of Village: Telav and that Ahmedabad-Viramgam Highway was passing just from the middle of Village: Telav dividing Village: Telav into two parts. On scrutiny of the said map, the Reference Court further held that one road was coming from Village: Godhavi to Village: Telav whereas another road was coming from Village: Shela to Village: Telav and third road was coming from Village: Kolat to Village: Telav. The Reference Court further took into consideration the map produced at Exhibit 40 and held that Ahmedabad-Sarkhej-Sanand Highway was passing from Village: Telav and that Village: Telav was situated just on both the sides of the

Highways whereas the boundaries of Village: Kaneti, Village: Sanathal, Village: Shela and Village: Sanand were touching the boundaries of Village: Telav. After noticing that Village: Telav was within the limits of AUDA, the learned Judge was of the opinion that the previous award of the Reference Court relating to the lands of Village: Shela was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant cases. On analysis of the evidence, the Reference Court found that there was very little distance between Village: Telav and Village: Shela and that the last survey number of the lands acquired from Village: Telav was just adjoining the first survey number of the lands acquired from Village: Shela because the canal was coming from Village: Godhavi to Village: Shela and then entering into Village: Telav, which meant that at one point of time, the lands acquired from both the villages were just adjoining each other. After placing reliance on the previous award of the Reference Court relating to the

lands of Village: Shela, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.79/- per square metre by the impugned award giving rise to the above numbered appeals and cross objections.

7. This Court has heard Ms.Mini Nair, learned Assistant Government Pleader, for the appellants, and Mrs.Sushma S. Shah, learned counsel for the original claimant(s) in each appeal and X-Objection at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court as well as Record & Proceedings received from the Reference Court.

8. The contention that in view of considerable distance between the lands acquired from Village: Telav and the lands acquired from Village: Shela, the previous award of the Reference Court relating to the lands of

Village: Shela should not have been relied upon by the Reference Court for the purpose of determining the market value of the lands acquired from Village: Telav, cannot be accepted. On appreciation of the evidence adduced by the parties, the Reference Court has held in paragraph 23 of the impugned award that there is a very little distance between Village: Telav and Village: Shela. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that the finding recorded by the Reference Court that last survey number of the lands acquired from Village: Telav was just adjoining the first survey number of the lands acquired from Village: Shela is eminently just and could not be demonstrated to be erroneous by the learned Assistant Government Pleader. It is well to remember that the canal constructed under Narmada Project is coming from Village: Godhavi to Village: Shela after which it is entering into Village: Telav, which means that the lands acquired from Village: Telav were situated quite near the lands of Village: Shela.

Relevancy of the previous award of the Reference Court relating to the lands of Village: Shela stands firmly established by the testimony of witness Momin Gulam Ahemad, who was examined on behalf of the claimants at Exhibit 41. It was asserted by this witness in his testimony that the lands of Village: Telav were adjoining to the lands of Village: Shela. It was also mentioned by the said witness that even Village: Sanand was situated just near the lands, which were acquired from Village: Telav. This assertion made by the witness for the claimants could hardly be disputed by the Acquiring Authorities during the course of cross examination of this witness. On appreciation of the evidence adduced before it, the Reference Court has made following pertinent observations in paragraph 31 of the impugned judgment:

> *Thus, the evidence on record indicates that the lands which were subject matter of previous awards of Shela, as discussed hereinabove, are in the vicinity and in reasonable proximity to the lands acquired in the present case. As observed earlier, a fertility and yield is also similar, but at the same time the advantage which the*

village Shela has got is also having same type of advantage to the village Telav because from the middle of the village Telav, Surkhej-Sanand Viramgam highway is passing and Sanand Railway Station and market Yard is only 1 km away from Telav and therefore there is also development in village Telav and also considering the fact that there is a Scheme of Sephrani bungalows and biggest water park viz. Goyal Water World, the Telav has also same type of advantage and considering this type of advantage its potential value can be considered and can be placed on the same footing as of Shela and therefore in my opinion reliance can be placed on the award of the village Shela which is also based on the judgment of village Godhavi confirmed by the Hon'ble High court. As discussed hereinabove, village Shela is just adjoining to the Surkhej-Viramgam highway and also considering the fact that the boundaries of village Shela and Telav are touching to each other and considering the fact that Viramgam highway is passing from the middle of the Telav and therefore in all these circumstances I am of the opinion that it is required to place reliance on the previous award of village Shela for the purpose of determination of the market value of the land acquired in the present case."

The learned Assistant Government Pleader could not point out to this Court as to how the findings recorded by the Reference Court in paragraph 31, which are quoted above, are erroneous.

9. On re-appreciation of the evidence adduced by

the parties, this Court is of the opinion that the Reference Court was justified in placing reliance upon the previous award of the Reference Court relating to the lands of Village: Shela for the purpose of determining the market value of the lands acquired in the instant cases. It is well settled that previous award of the Reference Court relating to the lands of a village, which has attained finality, can be relied upon for the purpose of determining market value of similar lands acquired from the adjoining village.

On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that the correct findings of facts have been recorded in paragraph 31 of the judgment, with which this Court fully concurs.

10. The contention that no development had taken place in Village: Telav and, therefore, the previous award of the Reference Court relating to the lands of Village: Shela should not have

been made the basis for the purpose of determining the market value of the lands acquired from Village: Telav, is devoid of merits. It may be stated that the witness for the claimants has stated in terms that his Village: Telav at the relevant point of time was fully developed and had facilities such as; telephone, primary schools, high schools, dairy, cooperative societies, agricultural cooperative societies, etc. What was asserted by the witness was that in his village, biggest water-park of Asia was situated and that the lands were plotted for the purpose of residences. It was mentioned by the witness that Village: Telav was situated at a distance of 1 Kilometre away from Sanand Railway Station whereas the market-yard was also at a distance of 1 Kilometre away from the village. The assertion made by the witness that the lands of Village: Telav were costly than the lands of Village: Shela could not be disputed by the Acquiring Authorities during the course of his cross-examination. Thus, there is no manner of doubt that the lands acquired from

Village: Telav had potential value and could have been used either for industrial purpose or commercial purpose or residential purpose. Once the potentiality of the lands situated at Village: Telav is taken into consideration, the compensation awarded to the claimants at the rate of Rs.85/- per square metre on the basis of the previous award of the Reference Court relating to the lands of Village: Shela wherein the claimants were awarded compensation at the rate of Rs.85/- per square metre, cannot be considered to be on higher side so as to warrant interference of this Court in the present group of appeals.

11. It may be stated that though ample opportunity was afforded to the Acquiring Authorities to adduce the evidence to refute the claim made by the claimants, no evidence was led to establish that the claimants were not entitled to enhanced compensation on the basis of the previous award of the Reference Court relating to the lands of Village: Shela. Except producing indexes

indicating the instances of sale, which had taken place in the last five years, no evidence could be produced by the Acquiring Authorities to meet the case advanced by the claimants. Though the witness examined on behalf of the Acquiring Authorities stated that the relevant factors were taken into consideration by the Special Land Acquisition Officer before determining the market value of the lands acquired from Village: Telav, relevancy of the particulars mentioned in the indexes could not be stated or proved by the said witness.

12. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which well-settled principles of law have been applied. The lengthy judgment running into roughly 31 pages has dealt with each and every aspect of the matter and rightly determined the market value of the lands acquired from Village: Telav. The learned Assistant Government Pleader could not persuade

this Court to take a view different than the one taken by the Reference Court on appreciation of the evidence adduced before it. Therefore, the appeals, which lack merits, deserve to be dismissed.

13. Coming to the Cross Objections filed by the claimants, this Court finds that the claim made by the claimants that they should have been awarded interest from the date of taking over possession of the acquired lands, which is prior to the date of publication of notification issued under Section 4(1) of the Act cannot be accepted in view of the decision of the Supreme Court in ***R.L.Jain (D) by L.R. vs. D.D.A. & Ors., AIR 2004 SC 1904.***

However, the claim advanced by the claimants in their Cross-Objections that they should have been awarded interest on the amount found payable under Section 23(1-A) of the Act deserves to be upheld in view of the decision rendered in ***Sunder vs. Union of India, 2001 (3)***

G.L.H. 446 wherein the Supreme Court has held that the person entitled to compensation awarded is also entitled to get interest on the aggregate amount including solatium. Therefore, the Cross-Objections filed by the claimants will have to be accepted in part.

14. For the foregoing reasons, all the appeals fail and are dismissed. The Cross Objections filed by the claimants are accepted in part and it is held that the claimants would be entitled to get interest on the aggregate amount including the amount awarded under Section 23(1-A) of the Act. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra